

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE MIRANDA M.)
) 2 CA-JV 2010-0129
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
_____)

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JV201000261

Honorable Stephen F. McCarville, Judge

AFFIRMED

Hamilton Law Office
By Lynn T. Hamilton

Mesa
Attorneys for Appellant

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By Kate E. Milewski

Florence
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K E L L Y, Judge.

¶1 Miranda M. was adjudicated delinquent in July 2010 after she admitted having committed criminal damage, a class one misdemeanor. On appeal she challenges the restitution order, claiming the juvenile court did not consider her ability to pay and erred by requiring her to compensate the victim for the cost of installing a home security system. We affirm for the reasons stated below.

¶2 In June 2010, a few weeks before her twelfth birthday, Miranda and twelve-year-old Breanna G. entered an unoccupied residence and painted graffiti throughout the house on appliances, the carpet, tile, fixtures and walls. Both girls were charged by delinquency petition with second-degree burglary and criminal damage. Pursuant to a plea agreement, Miranda admitted to an amended charge of criminal damage, a class one misdemeanor, and the burglary charge was dismissed. Following restitution and disposition hearings, the juvenile court placed her on probation for a period of six months, imposing various conditions of probation. The court also ordered Miranda and Breanna to pay restitution in the amount of \$4,127.80, specifying “pursuant to A.R.S. § 12-661, that each juvenile and their parents are jointly and severally liable for the damage suffered in this case.”

¶3 Miranda first contends the “court did not inquire into the children’s ability to pay restitution.” She adds, “There was no statement that Judge McCarville evaluated Miranda’s financial situation and ability to pay restitution before determining the amount owed.” We review a restitution order for an abuse of discretion. *In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007). In determining the propriety of the order, we view the facts in the light most favorable to upholding the court’s ruling. *Id.* “We

will not reweigh evidence, but look only to determine if there is sufficient evidence to sustain the juvenile court's ruling." *In re Andrew A.*, 203 Ariz. 585, ¶ 9, 58 P.3d 527, 529 (App. 2002). Additionally, we are mindful that an abuse of discretion includes the misapplication of the law or a legal principle. *In re Maricopa County Juv. Action No. JV-128676*, 177 Ariz. 352, 353, 868 P.2d 365, 366 (App. 1994). We note, too, that the propriety and amount of restitution must be established by a preponderance of the evidence. *See In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 118 (App. 2003).

¶4 Section 8-344(A), A.R.S., provides that when a juvenile has been adjudicated delinquent and "after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, [the juvenile court] shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent" By making the award of restitution mandatory, the statute recognizes and is consistent with a victim's constitutional right to restitution under article II, § 2.1(A)(8) of the Arizona Constitution. *See In re Ryan A.*, 202 Ariz. 19, ¶ 18, 39 P.3d 543, 548 (App. 2002) (obligation to pay full or partial restitution to victim of offense committed by juvenile mandatory).

¶5 With respect to ability to pay, § 8-344(C) provides as follows:

In ordering restitution pursuant to subsection A of this section, the court may order one or both of the juvenile's custodial parents to make restitution to the victim of the offense for which the juvenile was adjudicated delinquent The court shall determine the amount of restitution ordered pursuant to this subsection, except that the amount shall not exceed the liability limit established pursuant to [A.R.S.] § 12-661. The court may order a parent or juvenile who is ordered to pay restitution to satisfy the

order in a lump sum or installment payments to the clerk of the court for disbursement to the victim If the court orders the juvenile's parents to make restitution pursuant to this subsection, the court shall order the juvenile to make either full or partial restitution, regardless of the juvenile's insufficient earning capacity. The court shall not consider the ability of the juvenile's parents to pay restitution before making a restitution order.

¶6 At the disposition hearing, which was held the day after the restitution hearing, Miranda's counsel pointed out to the juvenile court that "Miranda . . . really has no resources from what [sic] she'll be able to pay restitution." Counsel pointed out that Miranda's parents were having difficult times, financially and personally, that Miranda was only eleven when she committed the offenses, and that she did "not have any real way to be able to pay back [the victims] for the damage that was not compensable by insurance." Counsel then questioned Miranda about sources of funds for paying the restitution, confirming she did not work, had never worked and did not have the ability to "get a job." Taking the matter of restitution under advisement, the court issued a subsequent order.

¶7 We assume a juvenile court is aware of and considers the applicable law and the evidence relevant to entering an appropriate order of restitution. *See In re Niky R.*, 203 Ariz. 387, ¶ 21, 55 P.3d 81, 86 (App. 2002) (we presume juvenile court makes all findings necessary to support disposition). Moreover, the record establishes the juvenile court had before it the relevant information, which we presume it considered. *Cf. State v. Cid*, 181 Ariz. 496, 501, 892 P.2d 216, 221 (App. 1995) (in appeal of sentence imposed following adult conviction, "an appellate court presumes that the trial court considered all

relevant mitigating factors in rendering its sentencing decision”). Additionally, the fact that the court permitted Miranda and her parents to pay in monthly installments of \$100 supports the conclusion that the court considered Miranda’s ability to pay and the other factors set forth in § 8-533(A). The court did not abuse its discretion in this regard.

¶8 Miranda also contends the juvenile court erred by awarding as part of restitution the \$1,000 cost for a home security system. Miranda raised this objection below,¹ arguing as she does on appeal that this expense could be characterized as consequential damages, but not direct economic harm resulting from the offenses Miranda and Breanna had committed.

¶9 A victim is entitled to restitution for economic losses that would not have occurred but for the juvenile’s delinquent conduct and that are directly caused by that conduct. *See* § 8-344(A); *see also Andrew C.*, 215 Ariz. 366, ¶ 9, 160 P.3d at 689 (using test articulated in *State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002), to determine appropriate restitution amount). In the adult sentencing context, economic loss is defined as “any loss incurred by a person as a result of the commission of an offense,” and includes “losses that would not have been incurred but for the offense.” A.R.S. § 13-105(16). It does not include consequential damages. *See State v. Baltzell*, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 (App. 1992). The court did not err here.

¶10 Rejecting Miranda’s objection that the expense was a consequential damage and could not be part of the restitution award, the court relied on *State v. Brady*, 169 Ariz.

¹Because of an apparent misunderstanding by Miranda and her parents about the date of the restitution hearing, they did not attend but Miranda’s counsel did.

447, 819 P.2d 1033 (App. 1991). In that case, Division One of this court affirmed the trial court's restitution award for moving costs to a sexual assault victim who was afraid the defendant would return to her previous apartment. *Brady*, 169 Ariz. at 448, 819 P.2d at 1033. The juvenile court stated, "Based on that decision, the court finds that the installation of an alarm system is equivalent to moving expenses and is therefore allowed."² We agree.

¶11 In *Brady*, the court noted that the defendant had threatened to return to her apartment and harm her if she called the police. *Id.* The court also pointed out that the victim had moved because she "feared that her assailant might return and do her further harm, and because the memory of the incident made remaining in the apartment stressful." *Id.* Finding the expense was an economic loss within the meaning of the statute and not, as the defendant contended, consequential damages, the court relied on *State v. Wideman*, 165 Ariz. 364, 369, 798 P.2d 1371, 1373 (App. 1990). There, the court had found "counseling expenses for a homicide victim's family were 'directly attributable' to the offense." *Brady*, 169 Ariz. at 448, 819 P.2d at 1033, quoting *Wideman*, 165 Ariz. at 369, 798 P.2d at 1373. The court in *Brady* concluded, "If the cost of psychological counseling for the victim of a violent crime is directly attributable to the crime, so are moving expenses incurred in an effort to restore the victim's equanimity." *Id.* As discussed below, the juvenile court did not abuse its discretion in finding the same analysis applicable to the cost of the security system.

²Agreeing with *Miranda*, however, the court disallowed lost rental income and extra home care services.

¶12 The record established the home Miranda and Breanna had invaded belonged to husband and wife victims from Canada and that it was, as the wife testified, “a vacation home” that they had recently purchased and intended to live in when they retired. At the time of purchase, the home had recently been remodeled and they planned to rent it “to help with expenses until we can enjoy some time there ourselves.” The victims filed a victim impact statement in which they itemized all costs they were requesting as part of the restitution claim; the wife testified specifically about those expenses. Among them was the cost of a security system; the wife explained, “we’re asking for \$1,000 towards a 3-year [security system] setup plan which we need to get.” She testified further they “would like” the security system immediately.

¶13 The property was being managed by a friend of the family. She, too, testified at the restitution hearing and provided a statement that was included in the victim impact statement. She explained at the hearing how she typically watched over the property, inspecting inside once a week and driving by as well. Neighbors had contacted the victims and had told them two girls were in the house; the victims had contacted the manager and she went there to investigate, discovering the extensive damage and calling the police. During her previous inspection of the home, she had made sure the doors were locked and she described generally what she did to secure the home in the past. In her written statement, she explained the front door deadbolt was unlocked, which was unusual. It appears the girls broke into the home by damaging the exterior door because among the damaged items was the door jamb and casing, which had to be replaced and painted. The interior door locks had to be replaced as well.

¶14 At the end of the victim impact statement, the victims made clear that the incident had left them feeling vulnerable and unable to protect their home. They stated they “felt helpless and discouraged.” They also stated they were concerned about the inconvenience the invasion had caused them and the amount of time they would need “to restore [their] house back to normal.” Perhaps most importantly, they stated they were “[e]xtremely nervous about retaliation,” that they would “not feel at peace in this neighbourhood with this young girl still living right across the street from us,” and that they were “a little unsettled about welcoming renters to our home knowing one criminal is right across the street.”³

¶15 Based on the evidence before the juvenile court, it readily could find that the manager had been unable to protect the property from the invasion by following her regular protocol and that a security system was necessary. The record supports the conclusion that the cost of the system did not constitute consequential damages but rather an economic loss resulting from the offenses because it is a reasonable expense designed to help “restore the victim’s equanimity.” *Brady*, 169 Ariz. at 448, 819 P.2d at 1033. The court therefore did not abuse its discretion by including the cost of the system in the restitution award.

¶16 In a footnote, Miranda contends the total amount the juvenile court ordered her to pay in restitution is inconsistent with the total of the items specified in its minute

³At the disposition, counsel tried to allay some of these fears by informing the court Miranda and her family had since moved. Nevertheless, that does not mean the victims would no longer fear retaliation, nor would it necessarily ensure the security of their home.

entry. She claims the correct total is \$3,717.88, speculating the court “made a computational error.” We agree there is a discrepancy but it is not in the amount Miranda proposes. Rather, the total amount the court awarded is \$4,127.80 and the total amount of the items in the minute entry is \$4,117.88. We believe the approximately ten-dollar discrepancy is the result of an error in the court’s minute entry with respect to the bank charges. The victim testified the bank charges were \$37.50, not the \$27.50 in the minute entry. This accounts for all but a few cents’ difference, which could be the result of a typographical or calculation error.

¶17 For the reasons stated, we affirm the adjudication and disposition in all respects.

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge